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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42221-2023(O&M)
Date of decision: 04.10.2023

Som Nath Petitioner
versus

State of Punjab Respondent

CRM-M-42305-2023 (O&M)

Som Nath Petitioner
versus

State of Punjab Respondent

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Rishu Mahajan, Advocate
for the petitioner.
Mr. Dhruv Dayal, Additional AG Punjab.

Mr. L.S. Sidhu, Advocate for the complainant.

ARUN MONGA, J. (ORAL)

Vide this common order, above-mentioned two cases are being disposed of since facts are analogues and issues raised therein are common. For brevity, recitals are taken from CRM-M-42221-2023.

2. Petitions herein are for quashing of order dated 07.11.2022 (Annexure P-2) passed by learned Sub Divisional Judicial Magistrate, Guruharsahai, Jalandhar, District Jalandhar, whereby petitioner has been declared a proclaimed person in FIR No.27 dated 29.04.2016 under Sections 420 and 120-B of IPC, registered at Police Station Lakho Ke Behram, Ferozepur as also thereafter FIR No.25 dated 21.03.2023, under Section 174-A of the IPC, registered at Police Station, Lakho ke Behram, Ferozepur, alongwith all consequential proceedings arising therefrom.

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated as matter of fact that the he has become the victim of the conspiracy hatched by the complainant. He missed the date as he noted a wrong date on 20.01.2020 as 22.02.2020 and thereafter he did not appeared on 22.01.2020 and accordingly he was marked absent from the proceedings. Thereafter, the Covid 19 situation arose and due to miss communication, he could not come to know about the proceedings before the trial Court.

4. Learned counsel for the petitioner further submits that there was no intention of petitioner to even escape the liability to the complainant. He was neither informed about the proceedings by the complainant even they being in talking terms with each other. Petitioner was declared proclaimed person at his back therefore, he could not join the proceedings of the Court below as he was not aware about the said proceedings and furthermore no proclamation was ever served upon him and without considering the aforesaid fact the petitioner was declared as proclaimed offender on 07.11.2022. Moreover, he could not join the proceedings of the Court below as he was not present in India and without considering the fact he Petitioner was declared as Proclaim offender. So, all the proceedings were carried out at his back.

5. Learned counsel for the petitioner further submits that petitioner has settled the matter with the complainant vide compromise dated 04.08.2023 (Annexure P-3) and on the basis of which the petitioner has filed a petition bearing CRM-M-42381-2023 seeking quashing of aforesaid FIR No.27 dated 29.04.2016 and this Court vide order of even date has directed the parties to appear before the *Illaqa* Magistrate//trial Court to record statement of the parties *qua* compromise and report is awaited 20.12.2023.

Hence, the present petition.

6. Learned State counsel, on advance service of petition, appears on behalf of respondent-State of Punjab and opposes the prayer made and submits that

learned trial Court rightly declared him proclaimed offender as he himself chose not to appear.

7. Learned counsel for complainant submits that he has no objection in case FIR in question is quashed.

8. I have heard learned counsel for the parties and perused the case file.

9. Vide order dated 07.11.2022 (Annexure P-2) passed by learned Sub Divisional Judicial Magistrate, Guruharsahai, Jalandhar, District Jalandhar, the accused-petitioner was declared as a proclaimed person and it was directed that intimation be sent to the concerned police station to register a case against him under Section 174-A of IPC. In my opinion, the very order for registering an FIR itself is not sustainable hereinafter.

10. Reference may be had to judgment rendered by me in *Pardeep Kumar versus State of Punjab and another*¹ passed in *CRM-M-41656-2023 (O&M) decided on 23.08.2023* wherein I have, *inter alia*, opined that the offence under Section 174-A of IPC falls within the scope Section 195(1) (a)(i) of the Code *ibid* which provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Further, it was held that if after declaring an individual as a “proclaimed person” or “proclaimed offender,” the Court decides to proceed against him for an offence under section 174-A of IPC, it has to institute a formal written complaint in the competent jurisdictional court and that the order passed for registering FIR and the FIR so registered in such case were not sustainable in law.

11. In the present case, proceedings under Section 174-A of IPC were not initiated as per guidelines and ratio laid down in Pardeep Kumar judgment *ibid*. As

¹ 2023 Live Law (PH) 181

an upshot, it is held that the judgment and order dated 07.11.2022 passed by the learned Magistrate is not sustainable on that ground alone. Neither there is any compliance of the relevant statutory requirements in letter and spirit, for declaring the petitioners a proclaimed person/offender, nor is the impugned judgment of trial court in terms of the guidelines laid in Pardeep Kumar judgment. For the sake of brevity, the guidelines laid down in Pardeep Kumar judgment are not being reproduced and the same may be referred therefrom. The requisite application of mind by the Court while invoking criminal liability of the petitioners for offence under Section 174-A of IPC is also lacking herein.

12. As submitted by the learned counsel for the petitioner, petitioner has compromised the matter with the complainant vide compromise dated 04.08.2023 (Annexure P-3), on the basis of which, upon filing CRM-M-42381-2023 the parties have been directed to appear before the *Illaqa* Magistrate/trial Court to record their statements *qua* compromise and the report of *Illaqa* Magistrate//trial Court is awaited for 20.12.2023.

13. In Pardeep Kumar's case *supra* it was also held that the offence under Section 174-A of IPC falls within the scope Section 195(1) (a)(i) of the Code *ibid* which provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Further, it was held that if after declaring an individual as a "proclaimed person" or "proclaimed offender," the Court decides to proceed against him for an offence under section 174-A of IPC, it has to institute a formal written complaint in the competent jurisdictional court and that the order passed for registering FIR and the FIR so registered in such case were not sustainable in law.

14. Considering the aforesaid facts and circumstances, I am of the opinion that the impugned order dated 07.11.2022, FIR and all subsequent proceedings emanating therefrom are liable to be quashed.
15. Accordingly, the aforesaid order dated 07.11.2022 (Annexure P-2) is hereby set aside and all consequential proceedings arising therefrom against the petitioner, stands quashed.
16. Pending application(s), if any, shall also stand disposed of.
17. Photocopy of this order be placed on the file of connected case.

(ARUN MONGA)
JUDGE

04.10.2023
Jyoti Thakur

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No